

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ADANI EXPORTS LIMITED.,)
)
 Plaintiff,) **2:05-cv-00304**
 v.)
)
AMCI (EXPORT) CORPORATION,)
AMERICAN METALS & COAL)
INTERNATIONAL INC., XCOAL)
ENERGY AND RESOURCES, XCOAL)
ENERGY AND RESOURCES, LLC,)
K-M INVESTMENT CORPORATION,)
ERNIE THRASHER, HANS J. MENDE,)
and FRITZ R. KUNDRUN,)
)
)
Defendants.)

MEMORANDUM ORDER OF COURT

Presently pending before the Court is the MOTION TO BIFURCATE CLAIMS AND PARTIES FOR AUGUST 17, 2009 TRIAL filed by Defendant, AMCI-Export Corporation (“AMCI-Export”), the RESPONSE IN OPPOSITION filed by Plaintiff, Adani Exports Limited (“Adani”), and the JOINDER OF DEFENDANTS ERNIE THRASHER, XCOAL ENERGY & RESOURCES, AND XCOAL ENERGY & RESOURCES LLC IN SUPPORT OF AMCI-EXPORT’S MOTION TO BIFURCATE.

After careful review of the filings and reflections upon the prior discussions and conferences with counsel in this case, it is **ORDERED** as follows:

1. Plaintiff’s claims in this case are bifurcated such that the trial of this case, which is scheduled for August 17, 2009, shall be limited to the matters set forth in the Pre-Trial Statements of Plaintiff and Defendant AMCI-Export related to (i) the negotiation, existence and terms of the alleged contract and contract formation issues, (ii) whether Defendant AMCI-Export

breached that alleged contract; (iii) Plaintiff's alleged damages, and (iv) Defendant AMCI-Export's defenses to such matter;

2. Both Adani and AMCI-Export are prohibited from referencing any claims or matters related to Defendants American Metals Coal International, Inc.; Xcoal Energy & Resources; Xcoal Energy & Resources, LLC; K-M Investment Corporation; Ernie Thrasher, Hans J. Mende, and Fritz R. Kundrun (the "excluded Defendants") at trial, including matters related to Plaintiff's claims, as set forth in its Amended Complaint, for fraudulent conveyance, successor liability, civil conspiracy, and alter ego liability;

3. The excluded Defendants are excused from the August 17, 2009 trial; and

4. For purposes of the August 17, 2009 trial, including jury selection, jury instruction and the verdict, the caption of the case shall be amended to identify only Plaintiff and Defendant AMCI-Export.

The Court will defer ruling until after the jury has reached its verdict in this case on the request of Defendants to enter an Order that the Amended Complaint against the excluded Defendants be dismissed if Defendant AMCI-Export prevails at trial and such verdict is affirmed on any subsequent appeals.

So **ORDERED** this 30th day of July, 2009.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

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